IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8921 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RD THAKKER

Versus

SECRETARY

Appearance:

1. Special Civil Application No. 8921 of 1999

MR ATUL G BAROT for Petitioner No. 1

MR KOGJE, AGP for Respondent No. 1

MR HS MUNSHAW for Respondent No. 2

RULE SERVED for Respondent No. 3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 23/04/2003

ORAL JUDGEMENT

#. By filing this petition, the petitioner, who is a retired employee, has prayed that the respondents be directed to pay him salary for the period between 9.5.1992 upto 6.12.1992 as well as to give all other permissible allowances for the intervening period.

#. At the relevant time, the petitioner was serving under the Ahmedabad District Panchayat and was posted at Viramgam Taluka Panchayat. In August 1981, he was sent on deputation and accordingly his services were handed over to the Deputy Director, Small Savings, Ahmedabad. However, after the aforesaid work of Small Savings was over, he was relieved from that office in which he was sent on deputation. Thereafter, the petitioner reported for duty as per the letter dated 8.5.1992, which is at page 23 in the compilation by informing the District Development Officer, District Panchayat, Ahmedabad to give him posting order. Subsequently, the petitioner was actually given posting at Viramgam Taluka Panchayat in December 1992. The grievance of the petitioner is that he was not paid salary for the intervening period, i.e. from 9.5.1992 to 6.12.1992. It is submitted by the learned advocate for the petitioner that, even though, the petitioner demanded the posting order for the said six months, he was not given the posting order, and, therefore, he could not resume the duty at Viramgam Taluka Panchayat and, subsequently, he joined the duty at Viramgam Taluka Panchayat after 7.12.1995. By this petition, it is, therefore, prayed that the respondents may be directed to give salary to the petitioner for the intervening period, i.e. from May 1992 to December 1992.

#. On behalf of the District Development Officer, Ahmedabad District Panchayat, Mr.Munshaw, learned advocate, submitted that since the petitioner was not willing to leave Ahmedabad City by joining the duty at Viramgam, he deliberately did not join the duty at Viramgam and, subsequently, even though, no specific order was given, ultimately, he joined the duty at Viramgam in December 1992. He further submitted that, even otherwise, the petitioner was retired in 1995, and, at that time, he had accepted all retiral benefits and he had not made any grievance. It is submitted by Mr.Munshaw that since the petitioner had voluntarily not joined the duty at the relevant time, he was not paid the salary for the intervening period.

#. It is argued by Mr.Barot, learned advocate for the petitioner that since no posting order was given to the petitioner, the petitioner was not in a position to resume his duty in May 1992 at Viramgam. He submitted

that the petitioner would like to highlight all these facts by making a detailed representation to the District Development Officer, Ahmedabad District Panchayat. He submitted that the petitioner will highlight in the representation that no posting order was given to the petitioner, and, therefore, he could not resume the duty at the relevant time. He submitted that he may be allowed to withdraw this petition in order to make a representation to the District Development Officer, Ahmedabad District Panchayat. Permission is granted. The petitioner is permitted to make a representation to the District Development Officer, Ahmedabad District Panchayat. In case, such representation is made on or before 10.5.2003, the District Development Officer may dispose of the same within a period of three months from the date of the receipt of the same. The District Development Officer may consider, whether any posting order was required to be given or, whether the petitioner willfully abstained himself from joining the duty at Viramgam Taluka Panchayat. It is for the District Development Officer to take appropriate decision in this connection after considering the factual material available on record. On merit of the issue, I am not expressing any opinion one way or the other. Mr.Barot has assured this Court that whatever may be the decision by the District Development Officer, the petitioner will abide by the same and he will not initiate any further proceedings in this very behalf. In view of this concession of Mr.Barot, the District Development Officer may take into consideration all the facts and circumstances of the case and may give just decision as per the record and in accordance with law, as, ultimate decision is going to be accepted by the petitioner without challenging the same any further. The petitioner may annex this order along with the representation. Mr.Munshaw is requested to communicate this order to the District Development Officer for taking appropriate decision in case such representation is made by the petitioner.

#. This petition stands disposed of as withdrawn subject to what is stated above. Rule is discharged with no order as to costs.

(P.B.Majmudar,J)

(pathan)